



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

15. — *Geschichte des ehelichen Güterrechts in Deutschland*. Von RICHARD SCHRÖDER, Professor der deutschen Rechte in Würzburg. *I. Theil: Die Zeit der Volksrechte. II. Theil. 1. Abtheilung: Das alamannische und bairische Recht. 2. Abtheilung: Das fränkische Recht des Mittelalters. 3. Abtheilung: Das sächsische und das friesische Recht.* Stettin. Danzig. Elbing. 1874.

THIS work is particularly creditable to German historical science. The author had originally the intention of writing the history of married women's property in Germany, from its origin to our own times. Then, as often happens, he narrowed the limits of his work, without, however, diminishing its value from the historical point of view, though it ends with the Middle Ages. This is owing to the fact that the law regulating the condition of property between husband and wife completed its development at the end of the Middle Ages and henceforward lost its vital force, so that its ultimate fate has less interest to the historian.

It seemed as though the task which Professor Schroeder has accomplished were likely to remain long impracticable. When one reflects upon the enormous mass of original authorities, many of which are still unpublished, with which the author must familiarize himself; when one casts an eye over the register at the end of this work, containing a table of the local customary laws of Germany in their immense variety; when one thinks of the voluminous literature which must be read and which is alone so formidable to the student, — one is at a loss whether to wonder most at Professor Schroeder's laborious patience, his capacity for work, or his sagacity as a jurist and historian which enables him to detect the thread of a general law in this infinity of isolated details. With all this, and as indeed was to be expected, it is very difficult for the reader, even though he is tolerably habituated to German modes of exposition, to make himself thoroughly master of this great quantity of material. On account of this difficulty it is to be feared that Professor Schroeder's book will be slow to exercise its due influence either on strictly legal or on historical and institutional publications in Germany, and if it is slow to influence Germany there is little chance of its finding appreciation elsewhere.

In his first part Professor Schroeder examines into the condition of German law in barbarous times as concerns the rights of property which were vested in married women. He reproduces here in a somewhat enlarged form an essay on the *dos* which appeared in 1861, in which he examined the character of two German institutions, the

*Morgengabe* and the *Muntschatz*. He shows the close connection existing between the *Muntschatz* and the fine incurred for breach of the *mundium* or guardianship. (*Muntbrüche*.) Then he examines the elements of the matrimonial fortune, and introduces here a remarkable study on two difficult points in the *Lex Salica*, the *reipus* (Cap. 44), and the *Achasius* (Cap. Chlod.). He next discusses the nature of the advantages secured by Lombard law to the wife on the occasion of marriage (*faderfium*), and by the laws of some other German races. In this connection he casts a glance at the legal position of women in regard to the right of succession. In the second book, after having explained the condition of the matrimonial fortune during marriage, and fixed the limits of the husband's rights over his wife's property and acquisitions, he continues the subject down to the dissolution of the marriage by death or otherwise. And finally he reaches the very interesting historical point, the origin of the community of goods between husband and wife. He finds in the *Morgengabe* the germ of this community, as well as of the modifications which very rapidly converted an insignificant gift from husband to wife, on the consummation of their marriage, into a provision for the eventuality of widowhood (*wittwenversorgung*). This germ will be seen developing itself from the beginning of the Middle Ages.

The system of German law divides itself into three principal groups. Of these, the first treated by Professor Schroeder, the Swabo-Bavarian, is in this connection only a branch of the second or Frankish group. As for the third, the Saxo-Frisian, it also shows signs of having felt Frankish influence. Thanks to the evidence given by the author, the development of the principle of community of goods in marriage is seen to be free from all influence, direct or indirect, of legislation or of Roman jurisprudence. It is simply the community of acquisitions existing in embryo in the *Lex Ripuariorum*, and growing naturally of its own accord. The author explains very well a point which was obscure before he touched it, how it happened that, since real property was the principal source of acquisitions, the consent of both husband and wife was necessary in order to alienate this source of revenue.

The varieties of the Saxo-Frisian group may be ranged under two types: the Ostfalian, delineated in the *Sachsenspiegel* and in the Customs of Magdeburg; and the Westfalian, in those of Dortmund, etc. The Ostfalian type presents the rule of unity of property (*Gütereinheit*), which is exactly that of separation of property. Marriage is here without effect on the property. The administration of the joint estate passes to the man by virtue of his right of guardianship. The

personalty of the wife, however, becomes the property of the husband with the exception of a certain class of objects, such as clothes, ornaments, etc., known under the term *Gerade*. The author proves these points by texts showing that the real property acquired by the husband with his wife's money becomes the husband's property, while the fact that the wife is proprietor of the *Gerade* is shown by cases where at the wife's death without heirs, the *Gerade* falls, not to the husband, but, as with goods which have no owner, to the judge. The Westfalian type, even so early as the time of the *Lex Saxonum*, is remarkable for the peculiarity of distinguishing between productive and unproductive marriages. In the former case Westfalian law follows the Ostfalian (*Gütereinheit*). Soon, however, the municipal law modified the old customary code so as to approach the community of goods. In the case of unproductive marriages, Westfalian law began by tending towards community; so the wife has in her own right not only the real estate which she has brought in marriage, and also the *Gerade*, but half the acquisitions besides. Here, again, municipal law came in to modify the customary; some municipal laws soon ceased to make any distinction between a fertile and a childless marriage. The law of Lübeck is the one which longest preserved in this matter the old Westfalian spirit. These two types sum up the characteristics of Saxo-Frisian law. Frankish law is seen here in its action on the particular customs, of which the Customs of Dortmund may be considered as the most important.

In the history of German law, of which our own may be considered as one branch, there are few chapters more interesting than that which Professor Schroeder has undertaken to write. The variety of systems from which he starts result, or at least tend to result, in unity, which in this case is the community of goods between husband and wife. If the work of Professor Schroeder is difficult reading, he may fairly excuse himself by appealing to the difficulty of the subject, but in any case it is a most valuable contribution to the history of law and society.